

1 MAUREEN E. MCCLAIN, Bar No. 062050
 2 ANNAMARY E. GANNON, Bar No. 92175
 3 KRISTA STEVENSON JOHNSON, Bar No. 185241
 4 LITTLER MENDELSON
 5 A Professional Corporation
 6 650 California Street, 20th Floor
 7 San Francisco, CA 94108.2693
 8 Telephone: 415.433.1940
 9 Facsimile: 415.399.8490
 10 Email: mmclain@littler.com
 11 Email: agannon@littler.com
 12 Email: kjohnson@littler.com

13 Attorneys for Defendant
 14 DOLLAR TREE STORES, INC.

15 BETH HIRSCH BERMAN, VA Bar No. 28091
 16 WILLIAMS MULLEN
 17 A Professional Corporation
 18 999 Waterside Drive
 19 1700 Dominion Tower
 20 Norfolk, VA 23510
 21 Telephone: 757.629.0604
 22 Facsimile: 757.629.0660
 23 Email: bberman@williamsmullen.com

24 *Pro Hac Vice* Attorneys for Defendant
 25 DOLLAR TREE STORES, INC.

26 UNITED STATES DISTRICT COURT

27 NORTHERN DISTRICT OF CALIFORNIA

28 MIGUEL A. CRUZ and JOHN D.
 HANSEN, individually and on behalf of all
 others similarly situated,

Plaintiffs,

v.

DOLLAR TREE STORES, INC.,
 Defendant.

ROBERT RUNNINGS, individually, and
 on behalf of all others similarly situated,

Plaintiff,

v.

DOLLAR TREE STORES, INC.,
 Defendant.

Case Nos. C 07 2050 SC and C 07 04012 SC

**DECLARATION OF DAVID
 MCDEARMON IN SUPPORT OF DOLLAR
 TREE STORES, INC.'S OPPOSITION TO
 PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION**

Date: May 1, 2009
 Time: 10:00 a.m.
 Dept.: Crtrm. 1, 17th Floor
 Judge: Hon. Samuel Conti

Trial Date: No Dates Set
 Complaints Filed: April 11, 2007
 July 6, 2007

1 I, DAVID McDEARMON, declare:

2 1. I have personal knowledge of the facts set forth below. If called upon as a
3 witness, I would testify competently thereto.

4 2. I am employed by Dollar Tree Stores, Inc. ("DTS") a wholly-owned
5 subsidiary of Dollar Tree, Inc. ("DT") (referred to as "Dollar Tree" or the "Company") at its
6 corporate office located at 500 Volvo Parkway, Chesapeake, Virginia, as its Director of Human
7 Resources, Field Operations. I have held a position in Human Resources at Dollar Tree for over
8 fourteen years. My responsibilities have included contributing to the development of a job
9 description for California Store Managers as well as assisting in communicating to such Store
10 Managers the Company's expectations concerning how their duties should be performed. Since
11 about April 2005, Dollar Tree has used the job description and a related certification process, which
12 I describe in this Declaration, to communicate its requirement that California Store Managers spend
13 a majority of their work time every week in performing managerial and supervisory responsibilities.

14 3. In early 2005, Dollar Tree settled lawsuits pending in the California Superior
15 Court for Orange County which alleged that certain store level classifications in California were
16 misclassified as non-exempt. I will refer to these cases under the name of the lead case, *Williams v.*
17 *Dollar Tree Stores, Inc.*, Case No. 01CC0329, a term which should be read as encompassing all
18 related cases involved in the settlement. The classifications challenged in the *Williams* lawsuit were
19 Store Manager, Assistant Store Managers (referred to as First Associate and Second Associate) and
20 Managers in Training. Attached hereto and incorporated herein by reference as **Exhibit A** is a true
21 and correct copy of the Joint Stipulation of Class Settlement in the *Williams* litigation. The
22 introductory language to the Stipulation (page 1, lines 6-11) contains a non-admissions clause. The
23 Class Period (from July 11, 1997 through December 11, 2004) is set forth at page 4, lines 2-3. The
24 job classifications covered by the class definition are set forth at page 4, lines 3-11. The Order and
25 Judgment Granting Final Approval of the *Williams* settlement was entered on July 14, 2005 by the
26 Orange County Superior Court. Seven to eight Store Managers opted out of the *Williams* settlement.

27 4. Dollar Tree has made several changes in its treatment of store personnel in
28 California. All Assistant Store Manager and Store Manager in Training classifications have been

1 treated as non-exempt entitling individuals in such classifications to overtime. The California Store
 2 Manager job description was revised to emphasize Dollar Tree's requirement that such Store
 3 Managers spend a majority of their time at work on supervisory and managerial functions.
 4 Generally, Dollar Tree entrusts each Store Manager with responsibility for managing one store (and
 5 some who function as Area Managers have responsibility for overseeing more than one store). A
 6 true and correct copy of the job description used only in California on and after April 19, 2005 is
 7 attached as **Exhibit B**.

8 5. In May 2005, I, together with other Dollar Tree management based at the
 9 corporate headquarters in Chesapeake, Virginia, traveled to California to meet with Store Managers
 10 working in California stores. Two such meetings were held in May 2005, one in Northern California
 11 and one in Southern California. All available California Store Managers employed at that time
 12 attended one of those meetings. At the meetings, I, together with other corporate-based personnel,
 13 distributed the new job description form and discussed a certification process that would shortly be
 14 implemented which required each California Store Manager on a weekly basis to certify via
 15 computer that he/she had spent a majority of their work week on exempt tasks, or if they had not, to
 16 briefly explain why they had not. Attached hereto as **Exhibit C** is a true and correct copy of the
 17 certification language in hard copy form. (In the past, if we had a computer issue or if a Store
 18 Manager did not complete the certifications, we would ask them to do so by distributing Exhibit C.
 19 Store Managers can now certify to past weeks electronically without the need for Exhibit C.)
 20 Exhibit C is a certification form completed by Plaintiff John Hansen (then the Store Manager of
 21 Store 1868 in Rohnert Park, California for the week ending 7/3/2006). Attached hereto as **Exhibit D**
 22 is a true and correct copy of the screen shots that a Store Manager uses each week to input his/her
 23 certification. The certification form describes the job duties that Dollar Tree expects and requires
 24 California Store Managers to perform. It is therefore a regular reminder of such requirements and a
 25 documentation of whether such requirements are fulfilled. During the roll-out of the certification
 26 process, Dollar Tree corporate managers emphasized that the certifications were to be completed on
 27 a timely and truthful basis. I (and others) emphasized during the Store Manager meetings in 2005
 28 that there would be no adverse consequence if a Store Manager answered no to the certification

question. And, in fact, Store Managers who remain employed with Dollar Tree today have answered no. A part of the certification process is asking each Store Manager to explain a no response when he/she completes the certification. This is not a time consuming task. Most Store Managers provide just a few words in explaining a no response, such as "inventory", "store clean up", "store being reset", "no hours", "first week at this location", "freight", "short an assistant", "no shows", "not making sales cut hours", "broken store" (to cite just a few examples).

6. Beginning in the summer of 2007 and on an intermittent basis thereafter, the Company has engaged in follow-up contact with those who answered no. Attached hereto as **Exhibit E** is a true and correct copy of a log of follow-up calls I conducted in August, September and October 2007, and in January and February 2008, at times together with Regional Human Resources Managers Reed Baldaras or Candace Camp. Attached hereto as **Exhibit F** is a true and correct copy of a log of follow up calls kept by both Kathryn Johnson Abel and me for calls made in June and July 2008. Ms. Abel, employed in Chesapeake, Virginia in the position of Associate Relations Representative, has made such calls at my direction and subject to my review. As can be seen from a review of answers given to us by the Store Managers who had provided a no answer to the certification question, the reasons given for such answer often relate to staffing or payroll issues which are particular to the store at the time of the answer. See, for example, the following responses.

Date	Store Manager	Store #	Reason(s) Provided	Proposed Solution
8/3/2007	Connie Visscher	1201	Being loaned to other stores to fix or prep things; tight payroll hours; backup cashiering	Can commit to a majority of managerial work once stays in her own store
8/7/07	Bernadette Suffle	1246	Payroll hours tight; also short staffed for a time at the Asst Mgr level	Can commit to a majority of managerial work as long as her staffing stays intact
9/10/07	Estella Sandoval	1207	Transitioning store from summer merchandising; cash register work	Should be able to certify yes once hours and sales rise and transition season is over
10/23/07	Maria Orozco	1234	Lost her Freight Assistant Manager	Just hired/trained replacement
10/25/07	Rick Gonzalez	3186	Tight payroll hours; SM out on medical	Things have improved

Date	Store Manager	Store #	Reason(s) Provided	Proposed Solution
			leave; crew needed more training	
10/30/07	Karen Cohen	2325	Some misunderstanding as to the definition of exempt managerial work; thought she had to work 65% managerial office work	Discuss that floor work can be managerial
1/31/08	Gene Korte	1205	Took over a broken store; high SPEH goal; called to help other stores a few times	Store is finally running properly and anticipates being able to do the majority exempt work
2/12/2008	Richard Hoyt	1229	Tight payroll	Higher minimum payroll hours set; confident of being able to work exempt class most weeks
6/27/2008	Robert Willey	2486	SPEH goal extremely high/difficult; was being loaned to other stores	As long as sales stay strong, should be able to work exempt class work
7/11/08	Jason Millstone	2262	Inherited a mess; large racetrack store with 7000 pieces in the backroom	Once he gets past inventory, he should be able to only manage

7. Attached as **Exhibit G** are true and correct copies of e-mails Ms. Abel sent to District Managers in October 2008 asking them to follow up with Store Managers in their districts who had provided no answers on several occasions. The District Managers were asked to look into each situation and take necessary action to ensure that such managers met the Company's expectation that they performed exempt work a majority of their work time.

8. The documents attached hereto as Exhibits E, F and G regarding follow-up on certification answers are maintained in the regular course of business by my department as records of Dollar Tree's certification process and of our attempts to ensure that California Store Managers understand the Company's expectations and take steps to fulfill the expectation that they perform exempt work for a majority of their time each work week. We try to ensure that any issue which the Store Manager thinks is causing him/her to work in non-exempt tasks is temporary and is being corrected.

9. In the past two years (2007 and 2008), California Store Managers' salaries and bonuses have been in the following ranges:

Year	Salary Range	Bonus Range
2007	\$33,207.20 - \$77,500	\$49.68 - \$23,593.10
2008	\$37,370 - 71,440.80	\$132.67 - \$23,649.02

The Human Resources department has access to the computer program in which salary and bonus data for Store Managers is maintained. Such information is maintained in the regular course of Dollar Tree's operations. The above chart was compiled from the Company's regularly maintained records under my direction. During the above period, Store Managers were compensated on a salaried basis together with a bonus potential based on the sales performance of the store. Before October 2007, the sales bonus formula was based solely on improvement in sales volume. Starting in October 2007, a component was added to reflect improvement in the margin of goods sold. In both cases, the aim of the sales bonus is to focus the Store Manager on those managerial skills (the training and direction of store employees to be competent and customer friendly, the merchandising of the store, the ordering and store placement of high margin goods, ensuring the neatness and cleanliness of the store, for example) which improve sales. Dollar Tree generally does not advertise its stores; the Company depends upon word of mouth from satisfied shoppers, which is directly related to how well the store is managed, in the Company's view. Additionally, certain Store Managers (based upon the store that they are managing) are eligible to receive a bonus related to the reduction of shrink in their stores. During fiscal year 2008, the approximate sales volume of stores in California ranged from a low of \$640,000 to a high of \$4.9M. The approximate range in store sale volume in California in fiscal year 2007 was from a low of \$720,000 to a high of \$5M. Dollar Tree maintains, as part of its proprietary and highly confidential business information data concerning the sales volume of all California stores. These ranges have been extracted from regularly maintained business records of Dollar Tree in order to present the information in a format that is not linked to any particular store, but does provide a picture of the degree of variance that exists in sales volume among stores in California.

10. Dollar Tree has several basic job classifications used in the field for staffing and overseeing Dollar Tree Stores. The basic job, often staffed on a part-time basis, is a Sales Associate. Sales Associates engage in cashiering, freight receipt, stocking and recovery (the process of picking up by cleaning the store and restoring merchandise to shelves). The next store position is that of an Assistant Store Manager; generally, Assistant Managers tend to specialize in freight and merchandising, front end work and operations. The Store Manager is the highest level employee in the store. All store employees are subject to the direction and supervision of the Store Manager. Associates and Assistant Store Managers are classified as non-exempt and as such are eligible to be paid overtime. The Store Manager reports to a District Manager who generally has responsibility for some 8 to 15 stores. The District Manager reports to a Regional Director who has responsibility for some 6 to 9 districts. (There are also training positions for the District Manager and Regional Director jobs called Area Managers and Market Managers. Individuals in such positions are responsible for a limited number of stores or districts working with a District Manager or Regional Director. An Area Manager also works as a Store Manager.) Regional Directors report to a Zone Vice President. There are also employees in field staff positions in human resources, asset protection and training who provide support services to the stores. The below chart reflects the current number of stores, districts and regions in California. Regarding the Zone Vice President, the individual in that position has responsibilities for a geographic area which includes, but is not limited to, California.

Stores: 273	Districts: 30	Regions: 4	Zone VP: 1
-------------	---------------	------------	------------

11. In addition, in my role as Director of Human Resources, Field Operations, my responsibilities include compiling, reviewing and maintaining personnel information related to Dollar Tree employees, including Store Managers. The Human Resources department in which I work maintains that information as part of the business records of Dollar Tree, and relies upon the information in the course of performing operational responsibilities for Dollar Tree. The information is regularly updated so that we have an accurate account of all Dollar Tree employees.

1 12. I provided the information set forth in the columns headed *Store Manager*
2 *Eligible for Shrink Bonus; Average # of Store Associates in September 2008* and *Average # of*
3 *Assistant Managers in September 2008* on the chart attached as Exhibit A to the Declaration of
4 Charlotta Jacobson-Allen accompanying Dollar Tree's Opposition to Plaintiffs' Motion for Class
5 Certification. On the chart attached as Exhibit B to the Jacobson-Allen Declaration, I provided the
6 information relating to the number, background, employment histories, and supervisory
7 responsibilities of Dollar Tree's current Store Managers in California. The information set forth is
8 an accurate account that has been retrieved from records regularly maintained and used in the course
9 of Dollar Tree's ongoing business operations.

10 Executed in Chesapeake, Virginia on April 8, 2009. I have read this Declaration and
11 hereby declare, under penalty of perjury under the laws of the United States of America, that it is
12 true and correct.

13
14 

15 DAVID McDEARMON

16 Firmwide:89364656.1 061603.1004
17
18
19
20
21
22
23
24
25
26
27
28